

STATE OF MICHIGAN
COURT OF APPEALS

GUY R. WALKER and GWENDOLYN Y.
WALKER,

UNPUBLISHED
January 24, 2003

Plaintiffs-Appellants,

v

No. 234382
Wayne Circuit Court
LC No. 00-015064-CL

CITY OF DETROIT, DETROIT FIRE
DEPARTMENT, DETROIT POLICE
DEPARTMENT, DETROIT FIRE
COMMISSIONER, AND DETROIT POLICE
CHIEF,

Defendants-Appellees.

Before: Zahra, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

I. Nature of the Case and Standard of Review

In this wrongful demotion case, plaintiffs¹ appeal as of right an order granting summary disposition for defendants under MCR 2.116(C)(8) and MCR 2.116(C)(10). Plaintiff, Guy Walker is a firefighter and former arson investigator who was stripped of his police status and removed from the arson investigation team after he fired his gun during a domestic dispute with his wife. We affirm.

This Court reviews a trial court's ruling on a summary disposition motion de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(8) tests the "legal sufficiency of the complaint" and permits dismissal of a claim if the opposing party has failed to state a claim on which relief can be granted. *Maiden, supra* at 119; MCR 2.116(C)(8). The trial court should grant a motion under this subrule if the claim is "so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Id.*, quoting *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

¹ Gwendolyn Walker's claims are derivative of Guy Walker's. Thus, for ease of reference, the singular "plaintiff" will be used throughout this opinion.

“A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint.” *Maiden, supra* at 120. Under MCR 2.116(C)(10), a trial court must consider the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party and determine whether the moving party was entitled to judgment as a matter of law. *Michigan Ed Employees Mut Ins Co v Turow*, 242 Mich App 112, 114; 617 NW2d 725 (2000); *Unisys Corp v Comm’r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999).

II. Procedural Due Process

Plaintiff contends that defendants violated his procedural due process rights when it revoked his “police status.” Procedural due process requires that the government “institute safeguards in proceedings that affect a ‘property’ or ‘liberty’ interest within the meaning of the Fifth or Fourteenth Amendment.” *Williams v Hofley Mfg Co*, 430 Mich 603, 610; 424 NW2d 278 (1988), citing *Arnett v Kennedy*, 416 US 134, 165; 94 S Ct 1633; 40 L Ed 2d 15 (1974). The fundamental requirement of procedural due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *In re Attorney Fees of Jacobs*, 185 Mich App 642, 645; 463 NW2d 171 (1990), quoting *Mathews v Eldridge*, 424 US 319, 333; 96 S Ct 893; 47 L Ed 2d 18 (1976).

The status of being a “public employee” does not necessarily confer a property interest in continued employment. *Manning v Hazel Park*, 202 Mich App 685, 694; 509 NW2d 874 (1993); *Johnson v Menominee*, 173 Mich App 690, 694; 434 NW2d 211 (1988). However, a statute or contract can establish a vested property interest in a public employee’s continued employment. *Wallace v Recorder’s Court*, 207 Mich App 443, 446; 525 NW2d 481 (1994). Here, plaintiff claims that a collective bargaining agreement assured that he could only be disciplined by the fire department for cause.

Plaintiff failed to submit a copy of the collective bargaining agreement to the trial court. Where, as here, a party bases a claim on a written document, the party is required to attach the document to the pleadings. MCR 2.113(F)(1). Because plaintiff never did so below, his pleadings are insufficient as a matter of law. *Maiden, supra*, 461 Mich at 119; MCR 2.116(C)(8). Additionally, this Court is not required to review a claim based on a written document when the document is not provided. See MCR 7.212(C)(7).

However, assuming *arguendo* that plaintiff’s contract claim is premised on the applicable collective bargaining agreement, plaintiff nonetheless failed to show that the “police status” he was granted under a Letter of Understanding between the fire department and the police department could not be revoked without just cause. The Letter of Understanding provides that plaintiff’s police status was granted and held at the absolute discretion of the police chief.²

² The Letter of Understanding provides, in part:

The power and authority of any Arson Squad Investigator may be revoked pursuant to the Charter of the city of Detroit . . . by the Chief of Police at any time and without assigning cause therefore. Persons whose commissions are so revoked by the Chief of Police shall not be eligible for reappointment until such

(continued...)

Plaintiff failed to demonstrate that the police chief owed plaintiff due process before revoking plaintiff's "police" powers. Thus, because plaintiff presented no genuine issue of material fact that he had a property interest in retaining his police status, the trial court correctly granted defendants' motion under MCR 2.116(C)(10).

III. Liberty Interest

Plaintiff also argues that defendants violated his liberty interest in reputation when it revoked his police status. To establish a liberty interest, an employee must show that the governmental employer's conduct might seriously damage the employee's standing and associations in the community or that it imposes a stigma that denies the employee the freedom to take advantage of other employment opportunities. *Manning, supra* at 695, citing *Bd of Regents of State Colleges v Roth*, 408 US 564; 92 S Ct 2701; 33 L Ed 2d 548 (1972).

Plaintiff asserts that defendants' conduct of revoking his police status is sufficiently severe to invoke his liberty interest. This Court has rejected the argument that even termination, without more, is a violation of a person's liberty interest. See *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74, 77; 80 NW2d 297 (1991). A fortiori, revoking plaintiff's police status, without more, is not a liberty interest violation.

IV. Defamation

Furthermore, plaintiff says that the fire department's letter to plaintiff's union, which explained why the department would not reinstate his police status, constitutes a defamatory publication. In *Gonyea, supra*, this Court outlined the elements of a defamation claim:

(1) [A] false and defamatory statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting to at least negligence on the part of the publisher, and (4) either actionability of the statements irrespective of special harm, or the existence of special harm caused by the publication. [*Id.* at 76-77, citing *Hodgins Kennels, Inc v Durbin*, 170 Mich App 474, 479-480; 429 NW2d 189 (1988), rev'd in part 432 Mich 894 (1989).]

Of course, all of these elements must be "specifically pleaded, including the allegations with respect to the defamatory words, the connection between the plaintiff and the defamatory words, and the publication of the alleged defamatory words." *Id.*, citing *Ledl v Quik Pik Food Stores, Inc*, 133 Mich App 583, 589; 349 NW2d 529 (1984). Here, plaintiff failed to allege a statement, a publication, or negligence on the part of the alleged publisher. Therefore, plaintiff failed to properly plead defamation. See *Gonyea, supra* at 77.

V. Breach of Contract – Demotion

(...continued)

time as the Police Chief may decide to reappoint them at his own pleasure and discretion.

Also, plaintiff avers that defendants breached their contract with plaintiff by demoting him. The analysis for a wrongful demotion claim is the same as for a wrongful discharge claim. See *Schipani v Ford Motor Co*, 102 Mich App 606, 619; 302 NW2d 307 (1981), rejected on other grounds *Kostello v Rockwell Int'l Corp*, 189 Mich App 241; 472 NW2d 71 (1991). To succeed on either claim, a plaintiff must show (1) proof of a contract term prohibiting discipline for other than just cause, *Lytle v Malady*, 458 Mich 153, 164; 579 NW2d 906 (1998), citing *Rood v General Dynamics Corp*, 444 Mich 107, 117; 507 NW2d 591 (1993), citing *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 636; 473 NW2d 268 (1991); (2) an oral or written express agreement that his job security was “clear and unequivocal,” *id.*, citing *Bullock v Automobile Club of Michigan*, 432 Mich 472, 479; 444 NW2d 114 (1989); or (3) an implied-in-law contract that gave him a “legitimate expectation” of job security. *Id.*, citing *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 615; 292 NW2d 880 (1980).

As discussed, plaintiff failed to produce a contract showing that his police status could not be revoked without just cause. Moreover, a Letter of Understanding specifically provides that plaintiff’s police powers could be revoked without just cause. Therefore, the trial court clearly did not err when it dismissed plaintiff’s wrongful demotion claim because plaintiff’s pleadings were legally insufficient to support it. See MCR 2.116(C)(8); *Maiden, supra* at 119.³

Affirmed.

/s/ Brian K. Zahra
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood

³ Plaintiff contends that the trial court erred by finding that plaintiff intentionally fired a shot at his wife. We note that ample record evidence supports this finding and any such conclusion is not clearly erroneous. Nonetheless, that fact is immaterial to the grant of summary disposition because, as discussed, the Letter of Understanding provides that plaintiff’s police powers could be revoked at any time and for any reason.